# Quid Novi

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FACULTE DE DROIT UNIVERSITY McGILL

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# Report: V.P. University Affairs

**by Tim Baikie**

At this week's Studsoc meeting, it was rather overwhelmingly decided to withdraw from RAEU (Regroupement des associations étudiantes universitaires du Québec). While there were valid reasons for dissatisfaction with RAEU, I felt that it was not a good idea to pull out of the only inter-university student group that we belong to; at least not without a clear alternative. As it exists now, McGill will only be an observer at RAEU, ANEQ, and MACA (two CEGEP student groups), without a vote on any of them. I don't feel that it is in McGill's interest to remain in a political limbo, where our ability to organize concerted action on issues affecting all university students, such as cutbacks, will be severely impaired. At the Council meeting a committee was struck to study possible alternatives for McGill, which could include an attempt to restructure RAEU. I volunteered to sit on this committee, and will keep you informed of its progress.

Also at the last meeting, I presented a motion with David Allsebrook to translate the important structural documents of the Society into French. We agreed to withdraw the motion upon assurance from the Programme Director that a two-year old directive to do exactly that would be implemented. (With this assurance, the motion was felt to be unnecessary). The only exception to this in the Constitution, which is currently being revised. The revised version will be translated before it is given final approval by Council and forwarded to Senate, thus giving both versions equal force and effect.

The final resolution passed was one calling for an accounting by the University of the financial date used in caluclating residence fees, and to consult with students before changing the fees.

Lastly, Studsoc had opened a resource centre in Room 433 of the University Centre. It contains the Studsoc "archives" and dossiers on different areas of concern to students, such as education, cutbacks, and government services. If you want to find out anything about McGill student government or student issues in general, this is the place to start.

## Wade Denied

On the advice of the Promotions Committee (Profs. Jane Glenn, Stanley Cohen, and Ralph Simmonds), the Dean has been unable to make a recommendation that Professor Wade be promoted from assistant to associate professor. Unless it receives a recommendation, under section 2.2.1 of McGill's Promotion and Tenure Regulations, the Board of Governors of the University will not promote a professor and will not extend his contract.

Under the set of regulations applicable to Prof. Wade, a professor hired at the rank of assistant professor has to be promoted within six years. As Prof. Wade is in his sixth year as an assistant professor, the refusal to promote means that his employment contract cannot be renewed.

This is the third time that Prof. Wade has been refused promotion.

## Errata

Last week, Quid Novi reported that Mrs Hale in the admissions office "makes the initial rough decision" on students' files. More precisely, she selectively forwards files to professors on the basis of the file's completeness and her estimation of its merit. She does not make any final decisions about files, but she is reponsible for determining which files get considered when.

The same article contained the statement that the Admissions Committee would be "working on a new structure for admissions." It should have read "re-admissions".

## Your Weekly Smile

My God, it's almost the end of the term. This is terrible. I'm behind in everything...especially my social life.

# Policy Alternatives

**by Todd Sloan**

There is some question, one supposes, as to whether the CCPA meets the criteria of a "public advocacy group." Its function is mostly to provide research for other organizations, in its own words "high quality educational and research resources (for) trade unions, co-operatives, citizens' groups, decisionmakers and all Canadian citizens involved in social and economic change." Its field is extremely broad -- social and economic policy. Yet it is funded by an open membership and relies almost exclusively on voluntary efforts; so it's worth a look at least as a new feature of the public advocacy movement.

The Centre was founded in 1980 by a group of left-of-centre academics and researchers (many from CLC unions) who perceived the need to "challenge the biases of existing research organizations and institutions" (eg. the Fraser Institute, C.D. Howe, etc.) which the founding members felt relied too much on "free market" givens. In an opening address at the 1980 convention, Jack Weldon referred to some established doctrines as "eighth day adventism.... they think that, after taking Saturday off, God created the market-place just to clear up any remaining problems." Whether or not the CCPA will be characterized in an adventist mode remains to be seen, but its stated objectives of developing "alternative strategies based on democratic control, public accountability, egalitarian principles and the right to meaningful employment" have resulted in research that goes somewhat beyond God inventing government spending on Monday.

The Centre is administered by a board chaired by Michael Oliver (of McGill and Carleton fame) and is advised by a Council composed of activists from most parts of Canada -- notwithstanding that, as with other "established left" groups, Québecois are under-represented, as are those who advocate the more radical economic solutions.

Working committees are the mainstay of the CCPA. There are three main groups herein:
Industrial Policy -- including, for example, committees on public sector instruments, international economic relations, labour market issues, fisheries, energy, agriculture, and micro-technology;
Social Policy -- eg. pensions, medicare; and
Macro-Economics Policy -- eg. taxation, monetary policy.

The CCPA distributes its finding through frequent publications, including its newsletter to members, and through a series of conferences the proceedings of which are also published. Even the McGill fearless Bookstore has one of the Centre's reports (on Pensions). The most recent conference "Medicare -- the Decisive Year" was held last weekend in the Stephen Leacock Building. The next major project is "An Alternative Agenda", a plan for economic recovery which could certainly figure largely before the P.M.'S Royal Commission.

There is, of course, a distinct legal aspect to any public policy issue, but the but the Centre is of interest also to those wishing to apply specific legal doctrines to CCPA work. A good example of this was our own Louise Dulude's excellent contribution to the CCPA tax conference, on the subject of the family unit.

Not unexpectedly, lawyers are not prominent among the Centre's membership, and volunteers would be more than welcome. The basic membership rate is $50 but I doubt the door would be closed to eager, not-so-affluent potential legal researchers. For information (including re: publications) write to CCPA P.O. Box 4466, Station "E", Ottawa, K1S 5B4 (tel: 613-235-0033) or speak to Todd the stentorian speaker.

## The McGill Microcatalogue

The Law Library has recently made some new acquisitions of importance. We now have a "McGill Microcatalogue" which is a catalogue on microfiche including the records of all the journals of the libraries throughout the campus and the records of other materials catalogued since June 1979 for all libraries except the following: the Islamic, Law, MacDonald Campus, Northern Studies, Osler and Health Sciences libraries. The records of materials from the Health Sciences library can be found in a separate microcatalogue and was also acquired by the Law library. Unfortunately, the Law library has not yet an automated catalogue so that the records of its materials (other than the law journals) are not found in the catalogue. The 2 microfiche readers can be found on the fourth floor of the library opposite the circulation desk. Assistance can be obtained from Louisa Piatta, Reference Librarian.

**Martine Turcotte**

The Bookstore is closing for the fall term on Nov. 29. Buy your books by that day, or wait until next term.

# *Advocacy Group may begin*

**by Heather Matheson**

The first International Human Rights Advocacy Group may soon be established here at the McGill Law School. The group's purpose would be to legally adopt one or two political prisoners, seeking avenues to either gain their release, or, at the very least, make their plights known to the public. As well, the group would act as a "legal watchdog" monitoring human rights issues as they come up domestically.

Twenty-two students met with Professor Irwin Cotler Wednesday, to hear background on current pertinent issues, and to look into the feasibility of setting up a group here. Prof. Cotler described the entire human rights situation as Dickensian, saying we're in the midst of the best of times, and the worst of times in terms of human rights violations on one hand, and human rights law on the other. Acknowledging that the success rate in these cases we've seen over the past ten years has been something short of reassuring, he nonetheless stressed that we have a responsibility to find some sort of redress for the disappearances, forced migrations, genocides, acts of terrorism and other examples of man's inhumanity to man. Comparing an advocacy group such as this proposed one to Ralph Nader's consumer law organization, Prof. Cotler pointed out that public pressure does work albeit slowly in the beginning. Even the "show trials" of dissidents in the Soviet Union are steps in the right direction.

There are two similar groups in the United States at this point -- one in Washington and the other in New York. Both run out of private offices, utilizing lawyers, law professors, and students. The situation at McGill would differ in that students would make up the major workforce, with Prof. Cotler, because of his active interest in these concerns, being, of course, intimately involved. "One person can make a difference," concluded Cotler, and, quoting André Sakharov, "I do not know what will help the cause of human rights. I do know that it will not be helped by silence -- particularly the silence of lawyers."

# Ethics in Tax Law

**by Demetrios G. Xistris**

On November 11, Heward Stikeman Q.C. spoke to a filled Moot Court on "ethics in tax law." Mr. Stikeman drew from his vast experience to provide one of the most warmly re- ceived talks given so far this year at McGill.

Ethics in tax law are extremely important, Mr. Stikeman stated, because the technicality and complexity of the Act often blur the distinction between right and wrong. Stikeman found ethics generally quite important in four areas: settlements, tax evasion, fraud, and billing.

Mr. Stikeman recalled the old motto that a bad settlement is often better than a good lawsuit. He observed that a good ethical lawyer is one who does not lead his client into a lawsuit because of the enthusiasm he has for the case or because he sees a principle that he wants to fight for. The client's interests must remain paramount.

Mr. Stikeman also claimed that contrary to popular belief, tax evasion is not the problem. Tax avoidance is. There are schemes such as the creation of subsidiaries in low-tax countries in order to funnel profits away from higher Canadian rates. Fundamental ethics arise when you try to tell the client that every part of his plan is fine but that it just is not acceptable when all put together.

When fraud appears, an ethical problem arises for the lawyer, although clients do not see it that way. When making a voluntary disclosure, a lawyer must be careful that he is not leading his client into a trap. There must be honest lawyer-client relations and lawyer-client confidentiality so that the lawyer may perform his functions properly. When lawyer-client honesty breaks down, the lawyer faces an ethical question as to whether he should continue to represent his client. Stikeman recounted a situation where he advised a client to make a voluntary disclosure. It was then since used by other parties to threaten the existence of his client's firm. This was an example of the principles a lawyer must consider when dealing with a question of voluntary disclosure.

Mr. Stikeman then offered some comments on billing. He said that the value of services is proportional to the success achieved, and that time should not always be the measure used to bill. When it came to the question of when to bill, Mr. Stikeman said that he preferred to bill in the heat of the battle "when the sword is still dripping."

There is no question that Heward Stikeman is the grandfather of Canadian tax law. His presence at the podium and the rousing ovation which he received merely confirmed this.

# Quid Novi

Quid Novi is published weekly by students at the Faculty of Law of McGill University. Production is made possible by support of the Dean's office, the Law Students' Association, and by direct funding from the students. Quid Novi is run on the tolerance for manifest pretentiousness of Al Alexandroff, Lynn Bailey, Dan Barker, Dougal Clark, Pearl Eliadis, Sidney Fisher, Daniel Gogek, Rick Goosen, Richard Janda, Heather Matheson, Paul Mayer, Brian Mitchell, Henri Pallard, Celia Rhea, Joseph Rikhof, Diane Sokolyk, Martine Turcotte, Demetri Xistris, and Gertie Witte.


**To all professors and students,**

Quid Novi will be publishing a features issue at the end of this term. The focus of the issue is "the law school classroom".

We are therefore inviting students and professors alike to contribute thoughts, experiences, and anecdotes pertaining to the classroom. Surely every one of you has had an amusing response from a nervous or unprepared student or professor, as the case may be. Quid Novi would greatly appreciate it if you could help to lighten the impending doom of exams by sharing a laugh with the entire faculty.

Submissions should be made to the Quid Novi box in the L.S.A. office by Friday, November 26, 1982. We look forward to hearing from you.

**The Editors**

**Announcements**

General Assembly, Wednesday November 24th at 12:00 in the Moot Court. On the agenda is the discussion of a study week in the fall term of 1983.

Student Society Meeting, Wednesday, November 24th at 5:00 p.m. in the UC 310.

*Editorial*

# Civil Law v. Common Law, or: black is black & white is...

What, then, is the essence of the much-vaunted civil law/common law distinction and does it have any importance? Prof. Crépeau, in particular, insists that the internal coherence of the civil law as a system of classification requires protection from incursions of the common law. For him, the civilian system of classification must preserve and enhance Québec's unique values. This becomes a touchstone for study of the Civil Code and, indeed, for the revision of the Civil Code.

But does "being a civilian" entail rigidly applying a black and white system of classification or is this a teaching method reflecting personal "values". Three-quarters of a century ago, the great social scientist (and civilian) Max Weber, investigated the basis of legal classification in his article "The Concept of Following a Rule". Weber considered the simplest contract of exchange and remarked: "It would obviously be a pure fiction...if one simply stipulated that the two men wanted to 'regulate' their reciprocal social relationships in a manner conforming to the ideal 'concept' of 'exchange', because we, the observers, attach this 'meaning' to their conduct from the point of view of a dogmatic classification. One might equally well say, logically speaking, that the dog that barks 'wants' to realise the 'idea' of the protection of property, because of the 'meaning' which the barking may have for his master." We can conclude with Weber that a system of classification does not determine what people or dogs do. At best, it is what lawyers think their behaviour means. What lawyers should wonder about is whether the system corresponds well to the actual meaning of people's behaviour. That, in turn, suggests that a system of legal classification is only as good as the results it leads to when applied.

From Weber's standpoint, it matters little how Cartesian and geometrical the internal coherence of a system of legal classification seems if that system cannot be applied to deal with real social problems. The primary purpose of studying the system of classification is to understand its treatment of those problems, not to understand the prettiness of its pattern of distinctions. Thus, one should study both the civil law and the common law looking to the results the systems achieve and the basis of those results. More often than not, those results are the same. Justice in contractual matters, for example, does not depend on the fact that I was born in Ontario rather than in Québec or that I first learned to speak English rather than French. And that we all have different "values" simply suggests that the law must fairly balance different interests -- it does not suggest that for each set of values there ought to be a different set of laws.

In short, we should worry less about the distinction between common law and civil law and more about the best solutions to particular legal problems.

**Richard Janda**

# LETTERS

The fact that most of the members of the MCB churn out half-intelligible and reasonably mootable court records every year is not in dispute. But what about the larger scheme of things. It is respectfully submitted that if one sets up the means, one cannot deny responsibility for the ends. The MCB is a curious animal. I have been informed by one member of the Senior MCB that it was within the power of the Board to unilaterally, without consulting or even informing students, propose changes in the method by which first year mooters are marked from an A,B,C scale to pass/fail (changes which were approved by Faculty Council). It was stressed that this proposal was a reflection of the experience and perception of the members of the MCB; the same MCB that did not hand out post-moot comment sheets to second year students because compiling the results involved too much paperwork. It was further stressed that the MCB could unilaterally propose changes to the marking scheme because it is an "academic body" and its members are akin to "professors." Just as a professor can decide how to grade his students without consulting them, so too can the MCB. After all, it was remarked, students don't know anything about grades -- they aren't in a position to contribute valuably to the debate.

The MCB is a curious animal not so much because of the blind deference it pays to the narrow-minded and authoritarian views of the educational establishment, but because it is rather selective about the circumstances in which it proclaims the inviolability of its power. An inquiry as to why, despite students' habitual complaints about the conduct of certain faculty members in their capacity as judges, these same faculty members are invited back every year to judge, yielded a three-fold response: to form a bench which would not contain a prof would be akin to heresy; there aren't enough good profs to go around; and, any attempt to advise a prof with respect to his judging skills would be seen as an insult. After all, the MCB seemed to be saying, we're just students.

Like so many who come to occupy positions of importance, the MCB holds an exalted view of itself and a degrading view of those whom it is supposed to serve.

**Sharon Speevak**
**Former Junior Moot Court Board Member**

# Jockey Shorts

**Football: The Rule of Law**

**by Vince Ferragamo**

The Interdicts and the Loopholes of the Faculty of Law (known, among themselves, as The Crimson Tide and The Gripper's Main Men) met on the field of many endeavor last Sunday Nov. 7. At 7 p.m. they still shared the pinnacle of their McGill Intramural Men's Touch Football league with two motley crews of lower campus laymen (whose names this reporter forgets; something like "The Fuzz" or "Daddy's Little Fish"). Two hours later, after the Interdicts battled their opponents to defeat, and the Loopholes overwhelmed theirs 1-0, they stood in splendid isolation. There was a game still to be played, to be sure, but that was in pith and substance within the family. The point was that it was Law who carried the league's banner.

As it happened, the Interdicts bested their learned colleagues, though one Interdict was heard admitting after the game "It was just a matter of points, really." In fact, no points were scored by the Loopholes, who, gentlemen to a fault, contented themselves with daring downfield dekes, stern play at the scrimmage, and some very exciting plans. A catch by Gary Lawrence and God gave the Interdicts a TD rather early in the game (rather too early, from a connoisseur's point of view; it gave the play something of a hasty edge). Kicking the ball far enough and in the right direction earned them a few more points, to leave the game, on paper at least, a 9-0 victory.

On the ground, an unjaundiced observer would have to admit that while the two sides were perhaps not on all fours with each other, they were less than readily distinguishable. The Dicks, and we all share their pride, maintain last year's lofty status, while the Loops continue to astound the campus -- they didn't even qualify for the playoffs in '81 ("per incuriam", says the team captain, Pierre LaTraverse. Perhaps the proposition for which this year's final game stands for most clearly is that expressed by Stuart Ducoffe: "Two great football squads," he said, "I guess the Admissions Committee does know what it's doing".

Though played at an awkward time, the game did not lack spectators; officials directed that it be played right by Douglas Hall (on friendly Forbes Field) to accommodate the crowds. The Hall was packed. Spectators

**Cont'd on p. 6**

# *Un Carnival Sportif Interfacultaire?*

**par Sylvie Lévesque**

Disciples de Thémis (i.e. étudiants en droit pour les incultes) êtes-vous fatigués d'étudier? En avez-vous ras le bol? Si oui, nous avons pensé à vous. En effet, si vous réussissez à tenir bon jusqu'aux 21 et 22 janvier prochains, vous serez récompensés. Vous aurez alors droit à un carnaval sportif interfacultaire, tenu ici même à notre bien-aimée Faculté.

Cet événement majeur et unique dans notre vie estudiantine réunira 5 facultés, de droit civil: Ottawa, Sherbrooke, Laval, Montréal, et McGill. Il y aura des activités pour tous les goûts: sports extérieurs (ski de fond, courses de luge, ballonbalai, etc.) et intérieurs (squash, badminton, volley-ball, etc.); un rallye des brasseries; un souper et dîners communautaires dont un "beer et pizza"; des "parties"; des remises de prix et finalement pour tous les Fred Astaire (ou John Travolta) en herbe, un grand concours de danse. Ces activités seront bien entendu échelonnées sur une période de 2 jours, soit le vendredi 21 et samedi 22.

Le but de cet événement est de s'amuser, mais aussi de rencontrer des étudiants venus d'ailleurs. A noter cependant que la participation n'est pas limitée aux "civilistes", mais, qu'elle est ouverte aussi aux "communistes"! (ou devrait-on plutôt dire les "common-lawistes"?). Ce n'est pas non plus réservé à l'élite, mais bien plutôt au "bon père de famille."

Il reste encore certains points à règler mais nous sommes confiants qu'un tel événement aura lieu, même si pour l'instant ce n'est pas une certitude absolue (i.e. "hors de tout doute raisonnable". Ce serait certainement une expérience amusante et enrichissante pour tous.

A moins d'une "force majeure" ou d'un "cas fortuit", j'ose espérer que vous vous ferez une "obligation" de venir, car vous êtes tous en "droit"...d'y participer!

## Shorts (cont.)

on the field numbered three, and they displayed marked interest at many points during the game.

But these men play for football, and they made that abundantly clear this night. (Watch for new of the Interdict's fortunes against the other league champions; the Loopholes have returned to the library.)

Note: On Sunday, the Dicks won the Intramural Football Championship 10-8. Congratulations to all involved.

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**'O Frankelmoin Fair'**

**by Tim Bark**

Wednesday, November 10, proved to be a memorable day for fans and players as the Flying Frankelmoin trounced the Biochemical 86'ers in a one-sided basketball game at the Sir Arthur Currie Gym.

Right from the opening minutes the Moin dominated the game with a dazzling display of ball-handling, tight defence and exceptional teamwork, the fruit of long hours of religious study.

The players, many of whom had found courage and inspiration during a pregame pep talk at an undisclosed Montreal watering hole, distinguished themselves by their sang-froid in admirable contrast to the previous week's slugfest. Wayne "Mad Dog" Burrows appears to have hung up his gloves and is playing b-ball with a vengeance. Paul "Duck" Dunn, meanwhile, seems to have recovered that legendary western poise as he sauntered around the court as naturally as if it were a corral.

Steve Krieger, Rick Elliott, and John Webster all played solid ball though John was somewhat discouraged to find that he fouled out after 10 minutes of play for the second time in 2 weeks.

The big story of the game, however, was the spectacular play of Dave K. Y'seman, whose low outside shooting provided the backbone to the Moin's devestating offence. Cliff "the Rookie" Halickman was equally poetic in his position at low post.

**Student Input Sought for the Teaching of Evidence**

Student criticism has been directed at the overlap of Evidence IA and Criminal Law II and the need to streamline the requirements of the National Program. Opinions and suggestions of students are urgently needed in order for us to assess what students think of the present system and where changes might be made.

To date, alternatives put forward include a National Evidence course, a trial advocacy course as a practical application of the basic materials and combining Common law Evidence and Civil Procedure into one course. What do you think? The curriculum Committee has a mailbox in the LSA office.

**Helen Rioux Morrison**

**Kevin Nearing**